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Attorneys for Plaintiff
GORDIUM INNOVATIONS LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GORDIUM INNOVATIONS LLC,

Plaintiff,

v.

ETHERWAN SYSTEMS, INC.,

Defendant.

Civil Case No. _____

**PLAINTIFF GORDIUM
INNOVATIONS LLC'S
ORIGINAL COMPLAINT FOR
PATENT INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

JURY TRIAL DEMANDED

Plaintiff Gordium Innovations LLC, for its Complaint against Defendant EtherWAN Systems, Inc., alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, et seq.

THE PARTIES

2. Plaintiff Gordium Innovations, LLC is a limited liability company organized under the laws of the State of Texas with its principal place of business at 106 Fannin Avenue, Round Rock, TX 78664-5219.

1 3. Upon information and belief, Defendant EtherWAN Systems, Inc. is a
2 corporation organized under the laws of the State of California, with its principal
3 place of business at 4570 E. Eisenhower Circle, Anaheim, CA 92807, and a
4 registered agent for service of process at Ming Chau Yang, 4570 E. Eisenhower
5 Circle, Anaheim, CA 92807.

6 **JURISDICTION AND VENUE**

7 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
8 1338.

9 5. Defendant is subject to the jurisdiction of this Court by reason of its
10 acts of patent infringement which have been committed in this Judicial District, and
11 by virtue of its regularly conducted business and systematic business contacts in
12 this state, including maintaining its principal place of business in this District and
13 its organization under the laws of the State of California.

14 6. Defendant has established sufficient minimum contacts with this
15 Judicial District such that it should reasonably and fairly anticipate being haled into
16 court in this Judicial District.

17 7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and
18 1400(b).

19 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,697,385**

20 8. The allegations set forth in the foregoing paragraphs 1 through 7 are
21 incorporated into this First Claim for Relief.

22 9. On February 24, 2004, U.S. Patent No. 6,697,385, entitled “Circuit(s),
23 Method(s) and Architecture for Configurable Packet Re-timing in Network
24 Repeater Hubs,” was duly and legally issued by the United States Patent and
25 Trademark Office. A true and correct copy of the ’385 Patent is attached as Exhibit
26 A to this Complaint.

27 10. Gordium is the assignee and owner of the right, title and interest in and
28 to the ’385 Patent, including the right to assert all causes of action arising under the

1 '385 Patent and the right to any remedies for its infringement.

2 11. In violation of 35 U.S.C. § 271, Defendant has directly infringed and
3 continues to directly infringe, literally and/or under the doctrine of equivalents, the
4 '385 Patent by making, using, selling and/or offering for sale in the United States,
5 including in this Judicial District, networking devices providing data prioritization
6 features as claimed in one or more claims of the '385 Patent ("the Accused
7 Products and Services"), without the authority of Gordium. For example, the
8 Accused Products and Services receive delay control signals in the form of priority
9 bits, or 3-bit fields within Ethernet frame headers, in inbound packets. While a
10 packet is not being transmitted, these products use the priority bits to configure
11 delays for sending received packets, utilizing priority queues and a transmission
12 selection algorithm (e.g., strict priority queuing).

13 12. The Accused Products and Services include, but are not limited to, the
14 ER58000 Series, EX77000 Series, EX87000 Series, EX89000 Series, EX75000
15 Series, EX76000 Series, EX83000 Series, EX73000 Series, EX63000 Series,
16 EX72000 Series, EX62000 Series, EX71000 Series, EX61000A Series, EX78000
17 Series, EX78000R Series, EX78602 Series, EX70900 Series, EX74000 Series, the
18 EX74262R-01VT, EX32900 Series, EX42900 Series, EX39924 Series, EX36100
19 Series, EX45900 Series, EX25611 Series, EX26182 Series, EX26262 Series,
20 EX27000 Series, EX29000 Series, EX17242 Series, EX17162 Series, EX17908
21 Series, EX17082 Series, and EX16900 Series Ethernet Switches.

22 13. Gordium provided actual notice to Defendant of its infringement of the
23 '385 Patent in a letter sent by certified mail on December 5, 2014. The letter
24 informed Defendant that the Accused Products and Services appeared to directly
25 infringe the '385 Patent, and identified the relevant features of the Accused
26 Products and Services. The December 5th letter also informed Defendant that
27 Defendant's actions, including advertising, marketing, and providing instruction
28 manuals and materials, induced others to infringe the '385 patent and cited at least

1 one specific example. A copy of the December 5th letter is attached hereto as
2 Exhibit B to this Complaint.

3 14. Defendant has had actual knowledge of the '385 Patent since at least
4 the date it received Gordium's December 5th letter.

5 15. Upon information and belief, Defendant engaged in the actions
6 described in paragraph 11 of this Complaint with specific intent to cause
7 infringement or with willful blindness to the resulting infringement because
8 Defendant has had actual knowledge of the '385 Patent and that its acts were
9 infringing the '385 Patent since at least the date it received the notice letter from
10 Gordium notifying Defendant that its products and services infringed the '385
11 Patent.

12 16. Upon information and belief, Defendant has induced and continues to
13 induce others to infringe one or more claims of the '385 Patent under § 271(b) by,
14 among other things, with specific intent, actively and knowingly, since at least as of
15 the date it received Gordium's December 5th letter, aiding and abetting others to
16 infringe, including, but not limited to, Defendant's customers and other users,
17 whose use of the Accused Products and Services constitutes direct infringement of
18 one or more claims of the '385 Patent. In particular, Defendant acted and continues
19 to act with specific intent to make others, such as its customers, infringe by
20 advertising and selling products and providing instruction manuals showing
21 infringing uses of the products and services. For example, in a bulletin titled
22 "EtherWAN's new Gigabit PoE IEEE802.3at Ethernet Switches are ideal upgrades
23 to your network," EtherWAN advertises that "[t]raffic is prioritized according to
24 802.1p, DSCP, and TCP/UDP port number, giving optimal performance to real-
25 time applications such as voice and video." EtherWAN's datasheets and user
26 manuals for the Accused Products and Services also inform EtherWAN's customers
27 and end-users of the products' infringing features by describing the products'
28 capability for delaying traffic using Class of Service priority queues. On

1 information and belief, since the time it received Gordium's December 5th letter
2 informing it that it was inducing its customers and users to infringe the '385 Patent,
3 Defendant engaged in, and continues to engage in, such actions with specific intent
4 to cause infringement or with willful blindness to the resulting infringement.

5 17. Because of Defendant's infringing activities, Gordium has suffered
6 damages and will continue to suffer damages in the future.

7 **JURY DEMAND**

8 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Gordium
9 demands a trial by jury on all issues triable as such.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Gordium respectfully requests that this Court enter judgment
12 for Gordium and against Defendant as follows:

- 13 A. an adjudication that Defendant has infringed the '385 Patent;
14 B. an award of damages to be paid by Defendant adequate to compensate
15 Gordium for Defendant's past infringement of the '385 Patent and any continuing
16 or future infringement through the date such judgment is entered, including interest,
17 costs, expenses and an accounting of all infringing acts including, but not limited
18 to, those acts not presented at trial;
19 C. an order that Defendant pay an ongoing royalty in an amount to be
20 determined for any continued infringement after the date judgment is entered;
21 D. a declaration that this case is exceptional under 35 U.S.C. § 285, and
22 an award of Plaintiff's reasonable attorneys' fees;
23 E. an award to Gordium of such further relief at law or in equity as the
24 Court deems just and proper.
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1 Dated: January 8, 2015

Respectfully,

3 /s/ Jonathan Baker

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